

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PAULETTE ANGUIMATE
2000 14th Street, NW
Washington, DC 20012

Plaintiff

v.

No. _____

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
Office of the General Counsel
20 Massachusetts Avenue, NW
Washington DC 20528

Defendant

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Plaintiff is a rape victim from the Central African Republic. In November of this year, she will be in Immigration Court, where defendant will attempt to deport her. Defendant has a three-page document in its possession, which it may use in Immigration Court. Defendant refuses to give that document to plaintiff. Plaintiff fears deportation, rape, torture, and death. Defendant's fears, if any, are different.

2. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§701 et seq. seeking disclosure of the three-page document discussed above, the "Assessment" of the Asylum Officer.

Jurisdiction and Venue

3. This court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a) (4) (B), 5 U.S.C. §§ 701-706 and 28 U.S.C. § 1331. This court has jurisdiction to grant declaratory and further necessary or proper relief pursuant to 28 U.S.C. §§2201-2202 and Federal Rules of Civil Procedure 57 and 65.

4. Venue in this district is proper under 5 U.S.C. § 552(a) (4) (B) and 28 U.S.C. § 1391(c) as all parties are located in the District of Columbia.

The parties

5. Plaintiff Paulette Anguimate is a native and citizen of the Central African Republic. She is scheduled for an Individual Hearing on November 29, 2012 before the Arlington, VA Immigration Court, where she will seek asylum, pursuant to 8 U.S.C. § 1158.

6. Defendant DHS is a department of the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f). DHS is responsible for enforcing federal immigration laws. DHS has possession and control over the document sought by plaintiff. DHS is seeking to deport plaintiff from the United States and return her to the dictatorial regime holding power in the Central African Republic.

Nature of the action

7. An alien fleeing persecution in her native country may apply for asylum here in the United States, pursuant to § 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158.

8. The alien is entitled to an interview before an Asylum Officer ("Officer"), who is employed by the DHS. At the interview, there is no court reporter and no recording device. The Officer has three options: 1] grant asylum, and write an "Assessment to Grant;" 2] make a provisional decision

to deny, write a "Notice of Intent to Deny," which allows the applicant to rebut the decision, and then make a final decision; or 3] deny the case, and write an "Assessment to Refer."

9. Instructions concerning the form and content of each of these three options are set forth in the *Affirmative Asylum Procedures Manual*, November 2007 [revised July 2010] at Appendix 44, 45, and 46.

10. Appendix 44 and an actual Assessment to Grant Asylum dated May 5, 2004, [which was obtained by the undersigned via a FOIA request] are attached hereto. *See* Attachment 1.

11. Appendix 45, and an actual Notice of Intent to Deny dated September 13, 2006, are attached hereto. *See* Attachment 2.

12. The DHS gives Notices of Intent to Deny to applicants thousands of times each month. The applicant is allowed 16 days to submit a rebuttal. Appendix 46, [Instructions and a model for an Assessment to Refer] is attached hereto. *See* Attachment 3.

13. An Assessment to Refer [Interview Date: 27 April 2000], obtained via a FOIA request by the undersigned, is attached hereto. *See* Attachment 4. An Assessment to Refer dated 9/12/2005, introduced into evidence in Baltimore MD Immigration Court, is attached hereto. *See* Attachment 4. An Assessment to Refer dated 07/31/01, introduced into evidence in Arlington VA Immigration Court, is attached hereto. *See* Attachment 4. An Assessment to Refer, attached to the decision in *Singh v. Gonzales*, 403 F.3d 1081 (9th Cir. 2005) as an Appendix, is attached hereto. *See* Attachment 4.

14. The instructions for Appendix 44, 45, and 46 are very similar. Whatever decision the Asylum Officer comes to, he will write an Assessment which must contain the same common elements. The decisions of the Officers which are attached hereto, whether they are Assessments to Grant, Notices of Intent to Deny, or Assessments to Refer, are very similar. Each of them contains the same common elements.

15. Assessments do not contain debate about a policy. They “are simply straightforward explanations of agency regulations to specific factual situations.” They are opinions “about the applicability of existing policy to specific factual situations.”

16. At times, an asylum applicant will give information to the Officer which he does not give to his own attorney.

17. Asylum Officers have a heavy workload. On some days, they interview three asylum applicants in a row, from 8:00 am to 1:00 pm. For some weeks, they interview ten applicants. For each applicant, the Officer must write some form of an Assessment. The Officer has a short deadline for each Assessment. He must finish each applicant this week, because next Monday morning he must interview still more applicants. Some Officers describe their job as being on a “relentless treadmill.” The Officer does not have any secretaries, clerks, or assistants. Most Asylum Officers are not lawyers.

18. At times, an Officer will make a mistake in an Assessment.

19. The Officer may decide to write an Assessment to Refer. If so, the document is the final decision of the DHS. No appeal is possible. The applicant is directed to appear in Immigration Court, which is part of the Department of Justice.

20. The Assessment to Refer is not given to the applicant; it is put into the applicant’s file. If the DHS lawyer believes it could discredit or impeach the applicant, the lawyer may attempt to use it in Immigration Court.

21. The Assessment may contain information provided by the applicant, which the applicant has not provided to his own lawyer. This information may help the applicant demonstrate that he deserves asylum.

22. The Assessment may cite to, or quote from, a particular newspaper, website, or other source.

23. The Assessment may contain information that suggests the applicant has not told the truth. In that event, applicant's lawyer can to encourage him to correct his earlier falsehood, and to tell the real story to the Immigration Judge.

24. Disclosure of the Assessment to applicant's lawyer will thus aid in achieving truth and justice.

25. The Assessment may contain errors made by the Officer. In that event, the applicant will be very surprised in court. It is unfair to the applicant to be taken by surprise in court, by use of a statement written by someone else. When a serious mistake is made by the Officer, the applicant might be able to resolve it informally or at a pre-trial conference. The Immigration Judge, no doubt, would prefer that the parties solve such a problem themselves. If not, applicant could issue a subpoena for the Officer, so the alien can cross-examine him in Immigration Court. The Officer might admit he made a mistake; or, the Immigration Judge might conclude that the Officer made a mistake.

26. The alien needs to know several weeks before the court hearing about the need for a subpoena, in order to get it served. The Immigration Judge will want to know how long a hearing might take, and which witnesses will testify. Disclosure of the Assessment will benefit the Immigration Judge hearing the case, and will benefit the Immigration Court as well.

27. The DHS has been inconsistent concerning disclosures of Assessments. As evidenced by the Assessments which are attached to the complaint, the DHS at times has given Assessments to applicants before trial begins in Immigration Court.

28. There was a time period, perhaps during the years 1998-2003, where Assessments to Refer were easily made available to asylum applicants. During this time period, and after: a] there was no "injury to the quality of agency decisions;" b] "open and frank discussions" inside the Asylum Office were not discouraged; c] there was no "premature disclosure of proposed policies;" d] the public was not "confused" or "misled" by the disclosure of "reasons that were not in fact ultimately the grounds for the agency's decision; and e] there was no effect on "the efficient operation of the government."

29. Whether or not Assessments are admissible into evidence in Immigration Court is controversial.

In *Kumar v. Holder*, 380 Fed. Appx. 665, 2010 U.S. App. LEXIS 10878 (9th Cir. 2010), an Assessment was introduced into evidence; the Immigration Judge relied upon it; but the Ninth Circuit ruled it was “improper” for the judge to have done that. Concurring Judge Silverman noted that “the assessment to refer played ... a substantial role in the [judge’s] adverse credibility determination.” 380 Fed. Appx at 668.

The Ninth Circuit criticized reliance upon an Assessment in *Singh v. Gonzales*, 403 F.3d 1081, 1087 (9th Cir. 2005), deeming it “potentially unreliable.” The Court attached a copy of the Assessment as an Appendix to its decision.

An Assessment was introduced into evidence over objection in *Sow v. Holder*, 2011 FED App. 0859N, 2011 U.S. App. LEXIS 25277 (6th Cir. 2011).

30. On January 30, 2012, in the Arlington VA Immigration Court, the DHS handed a copy of the Assessment of Ms. Nyima Sarr, # 087-665-034, to the presiding Immigration Judge, who read it. Counsel for Ms. Sarr, counsel for DHS and the Judge discussed the Assessment, on the record. Counsel for Ms. Sarr had not read the Assessment until that minute in open court.

Procedural history

30. Ms. Paulette Anguimate was born in the Central African Republic on January 10, 1980.

31. In February 2010, she marched down the streets in the capital city of her country, shouting anti-government slogans. She and her fellow protestors complained about the dictatorial practices of her government. As a result, she was arrested and beaten. She was put into a small, crowded jail cell without windows. She was given nothing to eat or drink. She was then brutally raped by two guards.

32. She departed from her country on June 5, 2010, and arrived in the United States that same day. Here in the United States, she suffers from nightmares and flashbacks.

33. In January 2011, she applied for asylum, filing Form I-589 with the DHS. Attached to her asylum application was a two-page Declaration about being raped, attached hereto. *See Attachment 5.*

34. On May 10, 2011, she was interviewed by a DHS Asylum Officer, Ms. Jennifer Bibby-Girth, at the Arlington, VA Asylum Office.

35. After the interview, the Asylum Officer prepared an "Assessment to Refer," which was typed and is three pages long. In that Assessment, the Officer summarized the evidence and gave reasons why the application of Ms. Anguimate was rejected.

36. On May 24, 2011, Ms. Anguimate was referred to Immigration Court.

37. Via a letter dated June 29, 2011, the "FOIA request," the undersigned requested: "a copy of the typed ASSESSMENT written by the Asylum Officer [I believe this would be two or three pages long.]"

See Attachment 6.

38. The DHS responded by sending 238 pages, via a letter dated September 14, 2011. Not included in those pages was the ASSESSMENT. The letter states that certain pages are withheld, because they were exempt under various provisions of the FOIA Act. Via a letter dated September 27, 2011, the undersigned appealed to the FOIA Appeals Office in Lee's Summit, MO. The DHS denied the appeal, without giving reasons or responding to the arguments of the undersigned, on December 21, 2011. *See Attachment 7.*

Exhaustion of administrative remedies

39. Plaintiff has exhausted any and all administrative remedies with defendant.

FIRST CAUSE OF ACTION

40. Plaintiff repeats, alleges and incorporates the allegations of paragraphs 1-39 as if fully set forth herein.

41. Plaintiff has a legal right under FOIA to obtain the Assessment, and no legal basis exists for defendant's failure to make it available.

42. Defendant has violated the FOIA, 5 U.S.C. §§ 552(a). Defendant's wrongful withholding of the agency record violates the FOIA, § 552(a)(3)(A).

SECOND CAUSE OF ACTION

43. Plaintiff repeats, alleges and incorporates the allegations of paragraphs 1-42 as if fully set forth herein.

44. The burden of proof "is on the applicant to establish that the applicant is a refugee." INA § 208(b)(1)(B)(i). 8 U.S.C. § 1158(b)(1)(B)(i). "There is no presumption of credibility." INA § 208(b)(1)(B)(iii). 8 U.S.C. § 1158(b)(1)(B)(iii). To assist applicant in meeting these burdens, Congress has also provided that the alien "shall have a reasonable opportunity to examine the evidence against him, to present evidence on the alien's own behalf, and to cross-examine witnesses...[but the alien does not have the right to examine] national security information..." INA § 240(b)(4)(B). 8 U.S.C. § 1229a(b)(4)(B).

45. Plaintiff has a "due process" right to a fair trial. Plaintiff has the right to fundamental fairness.

46. Defendant's actions are improperly infringing upon plaintiff's rights as outlined above.

THIRD CAUSE OF ACTION

47. Plaintiff repeats, alleges and incorporates the allegations of paragraphs 1-46 as if fully set forth herein.

48. Defendant has failed to timely and reasonably respond to plaintiff's request. Defendant failed to provide a clear and direct answer to the request. These failures constitute agency action unlawfully withheld and unreasonably delayed, in violation of the APA, 5 U.S.C. §§ 701-06.

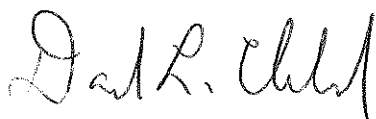
49. Defendant's failures are arbitrary and capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

WHEREFORE, plaintiff requests that judgment be entered in her favor against defendant and that the court:

- (a) Order defendant to disclose the Assessment to plaintiff forthwith;
- (b) Declare that defendant's failure to disclose the Assessment violates FOIA;
- (c) Declare that defendant's failures violate the APA;
- (d) Enjoin defendant from failing to disclose Assessments in the future;
- (e) Award plaintiff reasonable attorney fees and costs pursuant to 5 U.S. C. §552(a)(4)(E) and 28 U.S.C. § 2412; and
- (f) Grant all other such relief to plaintiff as the Court deems proper and equitable.

Respectfully submitted,

Attorney for Plaintiff

A handwritten signature in black ink, appearing to read "David L. Cleveland". The signature is fluid and cursive, with the first name "David" being the most prominent.

David L. Cleveland

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ATTACHMENT 1

44. ASSESSMENT TO GRANT

(Rev. February 2002)

ASSESSMENT TO GRANT ASYLUM

ALIEN NUMBER:

DATE:

NAME:

ASYLUM OFFICER:

COUNTRY:

REVIEWING SAO:

LOCATION:

[Decision-making /Decision-writing Training Shell; All bold or parenthetical language is for instructional purposes only and is to be deleted. Non-bold language in brackets may be chosen to replace text, where appropriate.]

I. BIOGRAPHIC/ENTRY INFORMATION

[Who is the applicant? Where and how did the applicant enter the United States?]

The applicant indicated that s/he is a [age]-year-old fe/male native and citizen of [count(ies)] who entered the United States [without inspection] at [POE] on [date] [and was admitted as a [status] until [date.]]

II. BASIS OF CLAIM

[What does the applicant fear? Whom does s/he fear and Why?]

The applicant fears that s/he will be [harm feared] by [feared persecutor] on account of [ground].

III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

A. ONE-YEAR FILING DEADLINE

[For applicants who filed for asylum prior to April 16, 1998, state that the 1-year filing deadline does not apply. For applicants who filed their I-589 within the 1-year filing deadline, state that the applicant is in compliance with the deadline.]

OR

[For applicants who did not timely file but have one or more exceptions and filed within a reasonable period, include an analysis of why the applicant's late filing should be excused, , including any changed and/or extraordinary circumstances established and a finding that the applicant filed within a reasonable time given the circumstances.]

B. PRIOR DENIAL BY IJ OR BIA

[For applicants who were previously denied asylum by an IJ or the BIA, include an analysis of the existence of

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changed circumstances that materially affect the applicant's eligibility for asylum, including a brief statement that the applicant was previously denied asylum by EOIR, an explanation of the changed circumstances established, how the changed circumstances materially affect the applicant's asylum eligibility.]

IV. SUMMARY OF TESTIMONY AND CREDIBILITY

[What happened to the applicant and/or individuals similarly situated, what does s/he fear, and why?]

The applicant credibly testified that [summary of material facts of applicant's testimony].

V. FOCUSED ANALYSIS

[Is the applicant a refugee? Do any bars or discretionary grounds for denial apply?]

[To receive asylum, an asylum-seeker must show past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.]

A. PAST PERSECUTION [If past persecution found]

The acts described by the applicant amount to past persecution on account of _____. [In all cases, explain why the harm is serious enough to constitute persecution. If the persecutor is a non-government entity, also explain how the evidence shows that the government is unable or unwilling to control the persecutor.] Thus the applicant has established that s/he is a refugee.

[If WFF presumed due to no fundamental change in circumstances and applicant could not reasonably relocate to avoid future persecution]

A preponderance of the evidence fails to establish that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution if s/he were to return. Country conditions reports indicate that [summary of country conditions] [Cite source].

A preponderance of the evidence fails to establish that the applicant could avoid future persecution by relocating within his or her country and that, under all the circumstances, it would be reasonable for the applicant to do so. [Briefly explain reasons.]

OR [If severity of past persecution or reasonable possibility of other serious harm warrants grant of asylum in the absence of a well-founded fear]

Although it has been determined that the applicant's fear of future persecution is no longer well-founded because a preponderance of the evidence establishes a fundamental change in circumstances [or if applicable the applicant reasonably could relocate within his or her country to avoid future persecution], the applicant has demonstrated compelling reasons for being unwilling to return due to the severity of the past persecution s/he suffered [or, the applicant has established that there is a reasonable possibility he or she would suffer other serious harm] [Briefly explain why.]

[GO TO COMPONENT VI. CLOSING PARAGRAPH. APPLICANT HAS ESTABLISHED ELIGIBILITY.]

B. IF CLAIM IS BASED ON FEAR OF FUTURE PERSECUTION

Did the applicant claim past persecution?

[The applicant claims past persecution, past persecution not found, but WFF found]

The events the applicant described do not amount to past persecution. However, the applicant has established a well-founded fear of future persecution on account of [ground].

OR

[The applicant's claim based solely on WFF]

The applicant did not claim to have suffered persecution in the past. However, the applicant has established a well-founded fear of future persecution on account of [ground].

2. Explanation of well-foundedness

The applicant has established all four prongs of the modified *Mogharrabi* test for well-foundedness. [Briefly explain how the applicant has established possession (or imputation), awareness, capability, and inclination.]

OR [If the applicant not singled out]

The applicant has established a well-founded fear of persecution by showing that there is a pattern or practice of persecution of groups of persons similarly situated to the applicant on account of one of the five grounds. [Briefly explain the group of persons subject to the pattern and practice of persecution and how the applicant is similarly situated to that group.]

Internal relocation

The applicant has established that the threat of persecution exists countrywide OR [The applicant has established that, under all the circumstances it is unreasonable for the applicant to relocate within his or her country to avoid future persecution.] [Briefly explain.]

VI. CLOSING PARAGRAPH

Thus, the applicant has established that s/he is a refugee. There are no mandatory or discretionary factors that make the applicant ineligible for asylum.

VII. DECISION

Assessment is to grant.

ASSESSMENT TO GRANT ASYLUM

ALIEN NUMBER: ~~A57032721~~

DATE: May 5, 2004

NAME: ~~Asanti D. Daboy~~

ASYLUM OFFICER: ZAR 190

COUNTRY: Togo

REVIEWING SAO: Bryan Christian 

LOCATION: ZAR

Applicant indicated that he is a 43-year-old male native and citizen of Togo who entered the United States at Sterling, Virginia (IAD) on June 24, 2003 and was admitted as a B2 visitor until January 23, 2004. Applicant filed for asylum on April 2, 2004. Applicant established by clear and convincing evidence that he filed his application for asylum within one year of his entry in the United States.

Applicant fears he will be harmed or killed by the government of Togo on account of his political opinion – party activist for the Union of Forces for Change (UFC), an opposition party.

Applicant credibly testified that he joined the UFC in November 1998 because he felt it represented the majority of Togolese citizens and would bring democracy to Togo. Applicant worked as a full-time volunteer for the party in the External Relations department. Applicant organized party meetings, distributed flyers, and liaised with local village chiefs to speak to villagers about the UFC.

On August 10, 2002, applicant narrowly escaped arrest during a party meeting. As applicant was helping to set up the meeting hall, he received a call on his cellular phone from a party colleague. The colleague, who was attending a second UFC meeting in a different location, warned applicant that gendarmes had broken up his meeting and that they were on their way to break up applicant's. Applicant began to circulate through the crowd to warn people that the gendarmes were on their way. Applicant could not warn everyone, however. Gendarmes attacked the meeting and arrested two of applicant's party colleagues.

On May 20, 2003, applicant was waiting with his colleagues for party leader Gilchrist Olympio at the UFC office in the city of Be. Gendarmes approached and began beating applicant and the others. A gendarme took applicant's belt and used it to strike him in the head. Applicant and four others, including UFC Secretary-General Jean Pierre Fabre, were arrested. Gendarmes transported Fabre separately to a police station and held him for one week. Gendarmes transported applicant and the others to the Be gendarmes' barracks, where they were interrogated about the UFC's plans. During the first week of detention, gendarmes placed applicant in a cell not large enough to stand in and left applicant in this cell for six days. Gendarmes beat applicant on his legs and provided him with only one meal per day. Applicant was not formally charged with a crime or given access to an attorney. Gendarmes released applicant on June 7, 2003 after seventeen days of detention. Applicant received medical treatment at a local hospital and was released on June 12.

After this incident, applicant resolved to leave Togo. He moved to his home village and began the process of applying for a visa to enter the United States. On June 28, 2003, applicant was summoned to appear at the "Anti-Gang" Barracks on July 2, 2003. The summons was delivered to his home in Lome. Applicant continued to reside in his village and did not respond to the summons. On June 30, 2003, applicant was granted a visitor's visa, and on July 23, 2003, applicant departed Togo for the United States.

Applicant's testimony regarding his activities in the UFC lacked the level of detail a reasonable person in applicant's position can be expected to provide. During the asylum interview applicant was asked when the UFC was founded. Applicant responded that it was founded in 1990. The UFC was founded in 1992.¹ During the asylum interview applicant was asked to name the highest body of the UFC. Applicant responded that it is the Administrative Council. The highest body of the UFC is the National Council.² Applicant was unable to describe the economic platform of the UFC when asked to choose between two simple alternative answers: "free enterprise" or "socialism." The UFC endorses a free-enterprise system.³ Applicant testified to volunteering for the UFC on a full-time basis. He also indicated he had regular meetings with the UFC's Secretary General. Applicant has had a high school education. Considering all the circumstances, a reasonable person in applicant's position can be expected to indicate accurately when his party was formed, name its highest body, and identify its economic approach given a choice between two simple alternatives.

This lack of detail notwithstanding, applicant provided extensive documentary evidence of his membership and activities in the UFC. This evidence included a UFC party card and party dues card, a statement from the UFC Vice-President for North America, an affidavit from a friend and fellow member of UFC in the United States, and affidavits from his brother, mother, and cousin in Togo attesting to his membership and activities in the UFC. The information contained in these statements about applicant's harm was consistent with applicant's testimony. In addition, applicant appeared nervous and withdrawn in the interview. Applicant provided a letter in support of his application from a Washington, DC-based physician. The physician found evidence of post-traumatic stress disorder (PTSD) in addition to finding that applicant's injuries were consistent with his narrative. Given the physician's findings regarding PTSD it is reasonable to infer that PTSD caused applicant's nervousness and reticence in the interview. Nervousness and stress caused by PTSD represents a reasonable explanation for applicant's inability to provide details about his party commensurate with his level of party activity. In light of this explanation, and considering the volume and quality of the documentary evidence applicant provided, the Service finds that applicant's testimony regarding his membership and activities in the UFC is credible.

In order to receive asylum, an asylum-seeker must show actual past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

¹ UFC Web site. <http://www.ufctogo.com> Accessed May 5, 2004.

² *Ibid.* See also RIC Response to Information Query (AO ZAR 190 has copy of response on file).

³ *Ibid.*

The acts described by the applicant amount to past persecution on account of political opinion. Security forces detained applicant without charge in May 2003 for seventeen days. During his arrest applicant was beaten, and during his detention he was placed for six days in a cell so small that he could not stand up. These harms rise to the level of persecution. The fact that applicant was arrested in May with UFC colleagues while waiting for a UFC party function to commence, and the fact that security agents questioned applicant during his detention about the UFC's plans establish that he was persecuted on account of his political opinion as an activist in the UFC party.

As applicant has established past persecution on account of one of the protected grounds, and as he has further established that the state is unable or unwilling to protect him, applicant has established that he is a refugee.

A preponderance of the evidence fails to establish that there has been a fundamental change in circumstances such that applicant no longer has a well-founded fear of persecution if he were to return to Togo. Country conditions reports indicate that the government's human rights record during 2003 remained poor. The Department of State's 2003 Country Report on Human Rights Practices for Togo states, "The government jailed and at times tortured political opponents of the government...[and] arbitrary arrest and detention were problems."⁴ Freedom House's 2003 *Freedom in the World* entry for Togo indicated, "Security forces commit abuses with impunity, and illegal detention is common."⁵

A preponderance of the evidence fails to establish that applicant could avoid future persecution by relocating within his country and that, under all the circumstances, it would be reasonable for applicant to do so. Since the government is the persecutor it is presumed to be able to persecute applicant anywhere in the country. No evidence in the record suggests otherwise.

There are no mandatory or discretionary factors that make applicant ineligible for asylum. Assessment is to grant.

⁴ Department of State. (2004, February 25). *Country Reports on Human Rights Practices: Togo*. [Online]. Available: <http://www.state.gov/g/drl/rls/hrrpt/2003/27757.htm> Accessed January 7, 2003.

⁵ Freedom House. (2003). *Freedom in the World 2003*. (New York: Author), p. 556.

ATTACHMENT 2

45. NOTICE OF INTENT TO DENY

(rev. January 2005)

Notice Of Intent To Deny

[Decision-making /Decision-writing Training Shell; All bold or parenthetical language is for instructional purposes only and is to be deleted. Non-bold language in brackets may be chosen to replace text, where appropriate.]

The purpose of this letter is to notify you of the intent to deny your request for asylum. U.S. Citizenship and Immigration Services ("USCIS") has carefully considered your written application and accompanying documents, available country conditions materials, and your oral testimony to reach this determination for the reasons given below.

I. BIOGRAPHIC/ENTRY INFORMATION

[Who is the applicant? Where and how did the applicant enter the United States?]

In presenting your request for asylum, you indicated that you are a [age]-year-old fe/male native and citizen of [countr(ies)], and you stated that you entered the United States [without inspection] at [POE] on [date] [and were admitted as a (status) until (date)].

II. BASIS OF CLAIM

[What does the applicant fear? Whom does s/he fear and Why?]

You fear that you will be [harm feared] by [feared persecutor] on account of [ground].

ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM [THIS SECTION ONLY INCLUDED A PROHIBITION ON FILING MAY EXIST. IF NOT, SKIP TO PART IV.]

A. ONE-YEAR FILING DEADLINE

[Include analysis only if application filed on or after 4/16/98 and application not timely filed.]

An alien may apply for asylum only if he or she demonstrates by clear and convincing evidence that he or she filed the asylum application within one year after his or her arrival date in the United States, unless there are either changed circumstances which materially affect asylum eligibility or extraordinary circumstances related to the delay in filing the asylum application. 8 U.S.C. §§ 1158(a)(2)(B), (D). You filed your asylum application on [date], more than one year after entering the United States.

If exception established, include:

- a statement of the changed or extraordinary circumstances established
- a finding that the applicant filed within a reasonable time given the circumstances

If an exception not established, include:

- a statement and supporting analysis of the finding that the applicant was found ineligible for an exception based on changed circumstances relating to country conditions because: 1) there was no change in country conditions,

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2) the change occurred before April 1, 1997, 3) the change did not materially affect the applicant's asylum eligibility, or 4) the I-589 was not filed within a reasonable time after the change, considering delayed awareness if applicable.

- a statement demonstrating that other possible changed and extraordinary circumstances relating to the applicant's case were examined, but the applicant was found ineligible for an exception based on those circumstances and why (for example, the circumstances are not deemed extraordinary, or the changed circumstances did not materially affect the applicant's asylum eligibility), OR, if the applicant was found ineligible for an exception based on an unreasonable delay in filing after changed or extraordinary circumstances, a thorough analysis of why the asylum officer found the delay in filing to be unreasonable given those circumstances.
- Skip to part VIII, Decision.

B. PRIOR DENIAL BY IJ OR BIA [when applicable]

An alien who has previously applied for asylum and had the application denied by an immigration judge or the Board of Immigration Appeals is not eligible to apply for asylum in the United States, unless there are changed circumstances materially affecting asylum eligibility. 8 U.S.C. §§ 1158(a)(2)(C), (D); 8 C.F.R. § 208.4(a)(3).

If exception established, include:

- a brief statement that applicant was previously denied asylum by EOIR
- an explanation of changed circumstances established
- how changed circumstances materially affect the applicant's asylum eligibility

If exception not established, include:

- a statement of any circumstances that were considered in the determination of whether the prohibition against filing for asylum applies
- a statement and an explanation of the finding that there were no changed circumstances, OR, if the applicant established the existence of changed circumstances, why the circumstances were not found to materially affect his/her asylum eligibility
- Where country conditions are relevant to the determination of changed circumstances pursuant to the guidance in this memorandum, a minimum of two country conditions citations supporting a finding that the applicant failed to establish a change in country conditions or that any change in country conditions materially affects the applicant's asylum eligibility.
- If country conditions information is not relevant to the determination of changed circumstances because it would not materially affect the applicant's asylum eligibility, the asylum officer includes in the assessment the statement, "Any change in country conditions would not materially affect your eligibility for asylum because (the applicant has not established a protected characteristic, is subject to a mandatory bar, etc.)" and an explanation of the reasons for the finding of no protected characteristic, the bar, or other reason country conditions would not materially affect the applicant's asylum eligibility.
- Skip to *Part VIII – Decision*.

IV. SUMMARY OF TESTIMONY

[What happened to the applicant and/or individuals similarly situated, what does s/he fear, and why?]

You testified that [summary of material facts of applicant's claim.].

V. CREDIBILITY

AFFIRMATIVE ASYLUM PROCEDURES MANUAL
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[Was the testimony internally consistent, consistent with extrinsic evidence, detailed? Note that credibility determination can be "split" -- some parts found credible, some parts found not credible.]

A. IF TESTIMONY CREDIBLE

You have presented testimony that was believable, consistent, and sufficiently detailed. Therefore, you are found to be credible.

In order to receive asylum, an asylum-seeker must establish past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1158, 1101(a) (42); 8 C.F.R. § 208.13(b).

[GO TO COMPONENT VI (B) AND (C) - ANALYSIS OF PP AND WFF]

B. IF TESTIMONY NOT CREDIBLE

In order to receive asylum, an asylum-seeker must establish past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1158, 1101(a) (42); 8 C.F.R. § 208.13(b).

Your testimony was found not credible for the following reasons: **[Explain basis for finding applicant not credible: e.g., list inconsistencies, kind of detail applicant was unable to provide, etc.]** You were unable to provide a reasonable explanation for this [material inconsistency, lack of detail, etc.] in that **[address why explanation given found not reasonable]**.

[GO TO COMPONENT VI (A) - ANALYSIS OF MATERIALITY]

VI. FOCUSED ANALYSIS COMPONENT

[Is the applicant a refugee? Do any bars or discretionary grounds for denial apply?]

A. MATERIALITY OF FACTS PRESENTED

[Applies only where testimony found not credible. Can the non-credible testimony be linked to elements for asylum eligibility? If yes, provide a brief explanation of how non-credible assertions have a direct and objective bearing on the basis for asylum eligibility.]

As your testimony was not credible in material respects, you have failed to meet your burden of establishing that you are a refugee as required by 8 C.F.R. § 208.13(a). Consequently, you are ineligible for asylum.

[NO FURTHER ANALYSIS IS NECESSARY. GO TO VIII. DECISION.]

B. PAST PERSECUTION

1. No past persecution claimed

You do not claim, and the evidence does not indicate, that you have experienced persecution in the past.

[GO TO VI(C) -- ANALYSIS OF WELL-FOUNDED FEAR]

2. Past persecution not found

The events you described do not constitute past persecution. **[Brief explanation as to why pp not found -- either the harm the applicant suffered was not serious enough to constitute persecution or, in cases where the harm was carried out by a non-government entity, the applicant did not establish that the government was unable or unwilling to control the entity that harmed the applicant.]**

AND/OR

The events you described are not found to have been on account of one of the five protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group or political opinion). **[Briefly explain why not "on account of."]**

[GO TO COMPONENT VI (C) - ANALYSIS OF WELL-FOUNDED FEAR]

3. Finding of past persecution on account of a protected ground

The events you described amount to past persecution on account of [ground].

a. Preponderance of the evidence establishes fundamental change in circumstances

Though you have established past persecution, a preponderance of the evidence establishes that there has been a fundamental change in circumstances in [name of country] to such an extent that you no longer have a well-founded fear of persecution if you were to return there. Country conditions reports establish that [brief summary]. **[Cite sources.] -[OR, Though you have established past persecution, a preponderance of the evidence establishes that there has been a fundamental change in your personal circumstances to such an extent that you no longer have a well-founded fear of persecution in [country]. [Explain.]**

Because you have established that you suffered persecution in the past, USCIS has carefully reviewed the facts of your case to determine whether to exercise discretion to grant asylum. However, your case does not reflect such severe past persecution as to present compelling reasons for being unwilling or unable to return to [country], nor have you established that there is a reasonable possibility you would suffer other serious harm if returned there. See 8 C.F.R. § 208.13(b)(1)(iii).

OR

b. Past persecution found, but preponderance of the evidence establishes it would be reasonable for the applicant to relocate within his or her country to avoid future persecution.

Though you have shown past persecution, a preponderance of the evidence establishes that you could avoid future persecution by relocating to another part of your country and under all the circumstances, it is reasonable to expect you to do so.

Because you have established that you suffered persecution in the past, USCIS has carefully reviewed the facts of your case to determine whether to exercise discretion to grant asylum. However, your case does not reflect such

severe past persecution as to present compelling reasons for being unwilling or unable to return to [country] nor have you established that there is a reasonable possibility you would suffer other serious harm if returned there. See 8 C.F.R. § 208.13(b)(1)(iii).

[GO TO VIII. DECISION]

C. CLAIM BASED ON WELL-FOUNDED FEAR OF FUTURE PERSECUTION

You (also) claim to have a fear of future persecution. To establish a well-founded fear of future persecution, an asylum applicant must show that his or her fear is both subjectively genuine and objectively reasonable. An asylum applicant may establish an objectively reasonable fear by demonstrating that there is a reasonable possibility of suffering persecution.

Accordingly, it is the applicant's burden to establish that:

- (1) she or he possess (or is believed to possess) beliefs or characteristics the persecutor seeks to overcome in others;
- (2) the persecutor is already aware, or could become aware, that she or he possesses these beliefs or characteristics;
- (3) the persecutor has the capability of persecuting the applicant; and
- (4) the persecutor has the inclination to persecute the applicant.

See *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

[Briefly explain how the applicant has failed to meet the modified *Mogharrabi* test for well-foundedness or failed to establish that internal relocation to avoid future persecution is not a reasonable option. Discussion of failure to meet any one prong of the test is sufficient.]

[If appropriate, use the following language with analysis.] An applicant can establish a well-founded fear of persecution by showing that he or she will be singled out for persecution or that there is a pattern or practice of persecution of groups of persons similarly situated to the applicant on account of one of the five characteristics in the refugee definition. 8 C.F.R. § 208.13(b)(2)(iii). You have failed to establish that you are similarly situated to any group of persons subject to a pattern or practice of persecution.

For these reasons, you have not shown there is a reasonable possibility of suffering the persecution you fear.

AND/OR [if the claim is not on account of a protected ground]

You have failed to show that the harm you fear is due to any of the five protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion). **[Briefly explain why it is not "on account of."]**

OR [if WFF found in a particular area or locality, but the threat of persecution does not exist countrywide and it is reasonable for the applicant to relocate]

An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating

to another part of the applicant's country, if under all the circumstances it would be reasonable to expect the applicant to do so. See 8 C.F.R. § 208.13(b)(2)(ii). You have failed to demonstrate that the persecution you fear exists throughout [country] or that, under all the circumstances, it would be unreasonable to expect you to relocate to another place in your country to avoid persecution in the future. **[Briefly explain reasons for finding that it is reasonable for applicant to safely relocate within his/her country.]**

VII. MANDATORY BARS

[If applicable, discuss mandatory bar(s).]

VIII. DECISION

For the reasons explained above, USCIS has found that you are not eligible **[for/to apply for]** asylum status in the United States.

You can provide rebuttal to this notice in support of your request. You have sixteen (16) days [6 days total for mail included] from the date of this notice to submit such rebuttal or new evidence. Failure to respond to this notice within this allotted time may result in the denial of your request for asylum.

Please direct any response to the address on this letterhead. Mark both the envelope and the contents as follows:

Attention: File Number A- _____ Rebuttal -- Z _____



U.S. Citizenship
and Immigration
Services

9-13-06

SEP 13 2006

~~1444~~ Elden Street
Suite 201
~~Herndon~~, Virginia 20150

RE:

NOTICE OF INTENT TO DENY

Dear Ms. Sheibeh,

The purpose of this letter is to notify you of the intent to deny your request for asylum. U.S. Citizenship and Immigration Services (USCIS) has carefully considered your written application and accompanying documents, available country conditions materials, and your oral testimony to reach this determination for the reasons given below.

In presenting your request for asylum, you indicated that you are a 31-year-old female native and citizen of Iran, and you stated that you entered the United States at JFK, New York City on April 15, 2006 and you were admitted as a B-1. Your non-immigrant visa status will expire on October 14, 2006.

You are represented by Ms. Nazanin M. Nasri of the Law Offices of Nazanin M. Nasri. The interpreter at your asylum interview was Fereshteh Ahrabi. Your attorney prepared the I-589 asylum application.

You fear that you will be harmed by Islamic Revolutionary Guards of Iran on account of your political opinion.

You testified that you were a child when the Islamic Revolution occurred in Iran and that the Islamic Committee at your high school often gave you warnings and insulted you for having a few strands of hair uncovered or for arguing with your religious teacher about the rights of women. You lived with your father and stepmother growing up and grew up with a sense of hatred and anger toward the Islamic regime because of your father's mistreatment of your mother. After graduating high school, you attended North Azad University in Tehran and graduated in 2002 with a master's degree in fisheries.

At the university, you were not allowed to socialize with male classmates on school grounds and you got into trouble on several occasions. One time during the summer of 1995, you were arrested at a party and detained for two days at the Vozara Committee. The arrest and detention created a file for you and after graduating, you could not get a government job and was rejected because of your arrest record. You went to work for your father-in-law as a Manager of the Nakhle Zarin Sport Club. You played Arabic music in your aerobic class and danced to music taped from Iranian TV programs on satellite television from California. One day, during aerobic exercise two female revolutionary guards with guns entered the class and after insulting the women, forced them out and took you to their office at the local committee where they interrogated, insulted you for three hours, and threatened to put you in jail if you continued with the dancing classes. They accused you of corrupting the women by playing western music and forced you to sign some papers without giving you a chance to read them. You were very depressed after your release and only went back to work teaching swimming classes. You further stated that one night after the leaving the club, a committee car stopped and asked where you were going at that time of night. You told the guard that you were coming back from work. You lost control and told the guard that you wished you had been born in another country and that the regime of Mullahs had made our lives miserable. The guard forced you into his car and took you to the Voraza committee where two female guards took your purse, did not allow you to call your family, searched your body and pushed you around and called you names. You were hungry, fearful, and when you asked for food, they laughed at you. You could not sleep all night and in the morning, a mullah reviewed your file and after lecturing and threatening you with prison, allowed you to call your husband. You were ordered to appear in Islamic court in three days. You appeared in court, your husband was insulted and blamed for allowing you to go out alone at night. You paid a big fine, signed a commitment that if arrested in the next five years, you would suffer imprisonment and would receive lashes. You left Iran and came to the United States to visit friends. Two nights before your departure, you conducted a dance class at your house and one of the neighbors alerted the guards. After arriving in the United States, your mother and your father-in-law advised you to stay because the local committee revoked your father-in-law's license and were out looking for you. You applied for asylum because you are certain that if you returned, you will be arrested and severely punished.

You have presented testimony that was believable, consistent, and sufficiently detailed. Therefore, you are found to be credible.

In order to receive asylum, an asylum-seeker must show actual past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group or political opinion. 8 U.S.C. §§ 1158, 1101(a) (42); 8 C.F.R. § 208.13(b).

The events you described both individually and cumulatively do not constitute past persecution. The arrests and detention that you described were brief and you did not establish that the harm you suffered was serious enough to constitute persecution.

You also claim to have a fear of future persecution. To establish a well-founded fear of future persecution, an asylum applicant must show that his or her fear is both subjectively genuine and objectively reasonable. An asylum applicant may establish an objectively reasonable fear by demonstrating that there is a reasonable possibility of suffering persecution.

Accordingly, it is the applicant's burden to establish that:

- (1) she or he possess (or is believed to possess) beliefs or characteristics the persecutor seeks to overcome in others;
- (2) the persecutor is already aware, or could become aware, that she or he possesses these beliefs or characteristics;
- (3) the persecutor has the capability of persecuting the applicant; and
- (4) the persecutor has the inclination to persecute the applicant.

See *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

You failed to meet the modified *Mogharrabi* test for well-foundedness in that, you did not demonstrate that the authorities had the inclination to persecute you. Your fear of harm is also found not to be subjectively genuine. On three different occasions following the incidences you described, you traveled out of the country and returned there without suffering any harm. According to your testimony, you traveled to England to visit your sister, returned and did not suffer any harm. Also, you traveled to Armenia, returned and did not suffer any harm. Your last trip was to Dubai to pick up your visa to the United States after which, you returned to Iran and again, did not suffer any harm. Your travels in and out of Iran undermine your fear of future harm. As such, your fear of future persecution is not subjectively genuine.

An applicant can establish a well-founded fear of persecution by showing that he or she will be singled out for persecution or that there is a pattern or practice of persecution of groups of persons similarly situated to the applicant on account of one of the five characteristics in the refugee definition. 8 C.F.R. § 208.13 (b) (2)(iii). You have failed to establish that you are similarly situated to any group of persons subject to a pattern or practice of persecution.

For these reasons, you have not shown there is a reasonable possibility of suffering the persecution you fear.

For the reasons explained above, USCIS has found that you are not eligible for asylum status in the United States.

You can provide rebuttal to this notice in support of your request. You have sixteen (16) days [6 days total for mail included] from the date of this notice to submit such rebuttal or new evidence. Failure to respond to this notice within this allotted time may result in the denial of your request for asylum.

Please direct any response to the address on this letterhead. Mark both the envelope and the contents as follows:

Attention: File Number A

Rebuttal -- ZAR 158

Sincerely,

John Kramar
JAK

John Kramar
John Kramar
Asylum Office Acting Director

cc: Nazanin M. Nasri
Law Offices of Nazanin M. Nasri
2000 N. 15th Street, Suite 103
Arlington, VA 22201

ATTACHMENT 3

46. ASSESSMENT TO REFER

(Rev. February 2002)

ASSESSMENT TO REFER

ALIEN NUMBER:

DATE:

NAME:

ASYLUM OFFICER:

COUNTRY:

REVIEWING SAO:

LOCATION:

[Decision-making /Decision-writing Training Shell; All bold or parenthetical language is for instructional purposes only and is to be deleted. Non-bold language in brackets may be chosen to replace text, where appropriate.]

I. BIOGRAPHIC/ENTRY INFORMATION AND BARS RELATED TO FILING

[Who is the applicant? Where and how did the applicant enter the United States?]

The applicant indicated that s/he is a [age]-year-old fe/male native and citizen of [countr(ies)] who entered the United States [without inspection] at [POE] on [date] [and was admitted as a (status) until (date).]

II. BASIS OF CLAIM

[What does the applicant fear? Whom does s/he fear and Why?]

The applicant fears that s/he will be [harm feared] by [feared persecutor] on account of [ground].

III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

A. ONE-YEAR FILING DEADLINE

[For applicants who filed for asylum prior to April 16, 1998, state that the 1-year filing deadline does not apply.]

The applicant filed his/her asylum application on [date]. The applicant [failed to establish/established] by clear and convincing evidence that the application was filed within one year after the last date of arrival to the United States.

[Insert analysis if clear & convincing evidence not established:]

If exception established, include:

- a statement of the changed or extraordinary circumstances established
- a finding that the applicant filed within a reasonable time given the circumstances

If an exception not established, include:

- a statement and supporting analysis of the finding that the applicant was found ineligible for an exception based

**AFFIRMATIVE ASYLUM PROCEDURES MANUAL
NOVEMBER 2007 (REVISED JULY 2010)**

on changed circumstances relating to country conditions because: 1) there was no change in country conditions, 2) the change occurred before April 1, 1997, 3) the change did not materially affect the applicant's asylum eligibility, or 4) the I-589 was not filed within a reasonable time after the change, considering delayed awareness if applicable.

- a statement demonstrating that other possible changed and extraordinary circumstances relating to the applicant's case were examined, but the applicant was found ineligible for an exception based on those circumstances and why (for example, the circumstances are not deemed extraordinary, or the changed circumstances did not materially affect the applicant's asylum eligibility), OR, if the applicant was found ineligible for an exception based on an unreasonable delay in filing after changed or extraordinary circumstances, a thorough analysis of why the asylum officer found the delay in filing to be unreasonable given those circumstances.
- skip to *part VIII, Decision*.

B. PRIOR DENIAL BY IJ OR BIA [when applicable]

If exception established, include:

- a brief statement that applicant was previously denied asylum by EOIR
- an explanation of changed circumstances established
- how changed circumstances materially affect the applicant's asylum eligibility

If exception not established, include:

- a statement of any circumstances that were considered in the determination of whether the prohibition against filing for asylum applies
- a statement and an explanation of the finding that there were no changed circumstances, OR, if the applicant established the existence of changed circumstances, why the circumstances were not found to materially affect his/her asylum eligibility
- Where country conditions are relevant to the determination of changed circumstances pursuant to the guidance in this memorandum, a minimum of two country conditions citations supporting a finding that the applicant failed to establish a change in country conditions or that any change in country conditions materially affects the applicant's asylum eligibility.
- If country conditions information is not relevant to the determination of changed circumstances because it would not materially affect the applicant's asylum eligibility, the asylum officer includes in the assessment the statement, "Any change in country conditions would not materially affect the applicant's eligibility for asylum because (the applicant has not established a protected characteristic, is subject to a mandatory bar, etc.)" and an explanation of the reasons for the finding of no protected characteristic, the bar, or other reason country conditions would not materially affect the applicant's asylum eligibility.
- Skip to *Part VIII – Decision*.

III. SUMMARY OF TESTIMONY

[What happened to the applicant and/or individuals similarly situated, what does s/he fear, and why?]

The applicant testified that [summary of material facts of the applicant's testimony]

IV. CREDIBILITY

[Was the testimony internally consistent, consistent with extrinsic evidence, detailed?]

A. IF TESTIMONY CREDIBLE

The applicant presented testimony that was believable, consistent, and sufficiently detailed. Therefore, s/he was found to be credible. [Or, assessment can state at the beginning of the Summary of Testimony, "The applicant credibly testified that _____.] Also note that credibility determination can be "split" -- some parts found credible, some parts found not credible.]

[GO TO COMPONENT V. B AND, IF APPROPRIATE, C -- ANALYSIS OF PP AND WFF]

B. IF TESTIMONY NOT CREDIBLE

The applicant's testimony was found not credible for the following reasons: [List specific discrepancies, inconsistencies, kind of detail applicant was unable to provide, etc.] When given an opportunity to explain, the applicant was unable to provide a reasonable explanation for [these inconsistencies, this inability to provide detail, etc.]

[GO TO COMPONENT V. A -- ANALYSIS OF MATERIALITY]

V. FOCUSED ANALYSIS COMPONENT

A. MATERIALITY OF NON-CREDIBLE ASSERTIONS

[Can the non-credible testimony be linked to elements for asylum eligibility? If yes, provide an explanation how the non-credible assertions have a direct and objective bearing on the basis for asylum eligibility.]

As the applicant's testimony was not credible in material respects, s/he has failed to meet his/her burden of establishing that s/he is a refugee as required by 8 CFR § 208.13. Consequently, s/he is ineligible for asylum.

[STOP! NO FURTHER ANALYSIS IS NECESSARY. GO TO VII. DECISION]

B. PAST PERSECUTION

1. No claim of past persecution

The applicant has not claimed and the evidence does not indicate that [s]he experienced past persecution.

[GO TO V. C -- ANALYSIS OF WFF]

2. No finding of past persecution on account of protected ground

The events the applicant described do not constitute past persecution. [Brief explanation as to why pp not found -- either the harm the applicant suffered was not serious enough to constitute persecution or, in cases where the harm was carried out by a non-government entity, the applicant did not establish that the government was unable or unwilling to control the entity that harmed the applicant.]

OR

The events the applicant described [and the harm applicant fears] are not found to have been on account of one of

the five protected grounds. [Briefly explain why. If neither past persecution nor future persecution on account of protected ground, can explain this in one paragraph and skip section on well-founded fear, since it is covered here.]

[GO TO V. C -- ANALYSIS OF WFF]

3. Finding of past persecution on account of protected ground

The events the applicant described amount to past persecution on account of [ground].

a. Preponderance of the evidence establishes fundamental change in circumstances

Although the applicant has established past persecution, there has been a fundamental change in circumstances in [country] to such an extent that the applicant no longer has a well-founded fear of persecution there. Country conditions reports establish that [brief summary] [cite sources]. [OR, Though the applicant has established past persecution, a preponderance of the evidence establishes that there has been a fundamental change in the applicant's personal circumstances to such an extent that the applicant no longer has a well-founded fear of persecution in [country]. [Explain.]] The persecution the applicant suffered in the past was not so severe as to provide compelling reasons to grant asylum in the absence of a well-founded fear of persecution, nor has the applicant established a reasonable possibility of suffering other serious harm.

OR

b. Past persecution found, but a preponderance of the evidence establishes that it would be reasonable for the applicant to relocate within his or her country to avoid future persecution.

Although the applicant has shown past persecution on account of a protected ground, a preponderance of the evidence establishes that the applicant could avoid future persecution by relocating to another part of the country in question and, under all the circumstances, it is reasonable for him or her to do so. [Explain why, keeping in mind that once past persecution is found there is a presumption that it is unreasonable to relocate and the government has the burden of proof to establish that it is reasonable under the circumstances.] The persecution the applicant suffered in the past was not so severe as to provide compelling reasons to grant asylum in the absence of a well-founded fear of persecution, nor has the applicant established a reasonable possibility of suffering other serious harm.

[STOP AND GO TO VII. DECISION]

C. CLAIM BASED ON WELL-FOUNDED FEAR OF FUTURE PERSECUTION

The applicant claims to have a fear of future persecution. The applicant has failed to establish all four prongs of the modified *Mogharrabi* test for well-foundedness in that s/he has not shown that [brief analysis of: possession (or imputation), awareness, capability, or inclination - use cc cites if reliance on country conditions determines outcome of decision.]

ALSO [IF APPLICABLE]

The applicant has failed to establish s/he is similarly situated to a group of persons subject to a pattern or practice of persecution such that his/her fear of persecution upon return is reasonable.

The applicant has not shown there is a reasonable possibility of suffering the persecution s/he fears.

AND/OR

The applicant has failed to show that the harm s/he fears is on account of one of the five protected grounds.

[Explain why no nexus was established.]

AND/OR [if WWF is found in a particular area or locality, but the threat of harm does not exist countrywide and it is reasonable for the applicant to relocate]

The applicant failed to demonstrate that the persecution s/he fears exists throughout [country] or that it is unreasonable for him/her to relocate within his/her country. [Briefly explain why.] An asylum applicant must show that the threat of persecution exists countrywide or that it is unreasonable for the applicant to relocate within his or her country to avoid future persecution.

VI. BARS

[Are there any bars? If so, address.]

VII. DECISION

For the foregoing reasons, the applicant is not eligible for asylum status in the United States. Assessment is to refer to the Immigration Judge.

ATTACHMENT 4

Assessment to Refer

Name:
Country: Indonesia
DOB: 10 August 1964

Interview Date: 27 April 2000
Assessment Date: 10 May 2000
Asylum Officer: R. Jungkuntz (ZAR-009)
Reviewing SAO: D. Lewis

The applicant indicated that he is a 45-year-old native and citizen of Indonesia who entered the United States without inspection at Seattle, and was admitted as a non-immigrant visitor (B-1). The applicant filed an Application for Asylum on 22 March 2000, thus meeting the One-Year-Filing requirement.

The applicant filed a request for asylum because [of past persecution and] she fears that he may be killed by societal elements that the government is unwilling or unable to control on account of his religion.

The applicant testified that he is a Christian and member of the Christian Church of Indonesia. He was employed as an auditor for various banks in the country from 1992 and, from 1997, was lecturer in economics at the STIE (school of economics) in Jakarta. His last banking position was with a Japanese Bank, Tokai Lippo Bank, from February 1998 until he quit, in August 1999, because he didn't like the Japanese culture at the bank, i.e., he didn't like bowing at a 45-degree angle every time a superior passed by. He submitted his resignation and just did his lecturing.

He stated that on 12 May 1998, when all the upheaval was going on, workers at the bank were told to go home early, and that he had to walk. On his way, there was a crowd of the Muslim party in front of a mosque who accosted him and asked to see his i.d. He stated that from his name (David) and his dialogue (most Batak are Christian) they surmised that he was Christian, and someone hit him from behind and others began to punch and box him on the arms before he was allowed to go on. On 13 and 14 May offices were closed, and on the 15th he returned to work. During this period windows along the street were destroyed.

The applicant stated that in the area where he lives he is recognized by his name and known to be a Christian, and where he lectures is where Muslims have their base - The United Development Party. He described two instances where his car was damaged: once in September 1998 when it was scratched; and once in September 1999 when the tires were slashed. He stated that he fears a *jihad*, or holy war, that has been declared and supported by Muslim parties.

The applicant stated also that he was a member of the GMKI, the Indonesian Christian Student Movement, from 1988, and that if the jihad movement takes over the country, they will find out, putting him at serious risk.

To receive asylum, an asylum-seeker must show actual past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Although the applicant presented testimony that was generally

believable, consistent, and sufficiently detailed, and therefore credible, the testimony and facts he presented do not support a claim that he is a refugee, so defined.

The applicant does not appear to be subject to any mandatory or discretionary bars to asylum.

The applicant has not presented testimony that he has suffered past persecution. The events the applicant described – a single instance of being beaten up and some damage to his car – do not constitute past persecution. With regard to the breaking of windows, the applicant's office was on the 25th floor of a 28-story building.

With regard to the applicant's claim to have a fear of future persecution, he has failed to establish all four prongs of the modified *Mogharrabi* test for well-foundedness in that he has not shown either that his feared persecutors would have any particular interest in him as a Christian, or that, simply by virtue of being a Christian in Indonesia – along with a couple of million others – he is similarly situated to those Christians who have been (or are being) persecuted on religious grounds, such that his fear of persecution upon return is reasonable.

For the foregoing reasons, the applicant is not eligible for asylum status in the United States. The Assessment therefore is to refer his case to the Immigration Judge.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
BALTIMORE, MARYLAND

In the matter of:)

~~Gregorio Melendez MORALES~~)

Respondent)

In Removal Proceedings)

File No: A ~~93-016-001~~

DEPARTMENT OF HOMELAND SECURITY'S EVIDENCE

COMES NOW the Department of Homeland Security, U.S. Immigration & Customs Enforcement, by and through undersigned counsel, and files the following as evidence in this matter:

A. 1-Year Referral Assessment, dated September 12, 2005

pp. 1-4

Respectfully submitted,

DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
OFFICE OF CHIEF COUNSEL

COPY
Ahrah Kang
Assistant Chief Counsel
31 Hopkins Plaza, 7th Floor
Baltimore, Maryland 21201

Dated: May 4, 2007

1 YR REFERRAL ASSESSMENT

| | | | |
|-------------------|--|---------------------------------------|--|
| ZAR | Officer Name: | D. Lewis <i>[Signature]</i> ZAR006 | Date: 9/12/2005 |
| Applicant's Name: | XXXXXXXXXX XXXXXXXXXX | COUNTRY | A XXXXXXXXXX |
| | | CONGO (DRC) | |
| Supervisor: | A. Sulucz, ZAR 179 <i>AS</i> | Concur: | Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> |

Not filed timely, applicant did NOT establish entry date or whereabouts outside of US, no exceptions found.

Applicant indicated that she is a thirty-five year-old married female, a native and citizen of the Democratic Republic of Congo (DRC) who claims she arrived in the United States on May 6, 2005 at the WAS/Dulles International Airport in VA where she was admitted using a French passport with an unknown name. No NIS records could be checked because she claims she did not know the name used on the passport. Based on the applicant's own admission she is not in a valid status.

Applicant fears persecution by government forces in the Congo (DRC) on account of her husband's political activities.

Applicant failed to demonstrate by clear and convincing evidence that her application was filed within one year after her last arrival. She filed her application for asylum on August 3, 2005. To be considered as having file her application for asylum in a timely manner, she must establish by clear and convincing evidence that she arrived in the United States on or after August 2, 2004. The applicant failed to provide convincing testimony or documentation that she arrived during this one-year period. Her claim of having been detained and raped at Camp Tshatshi in Kinshasa by a Congolese Commandant because her husband was communicating with a former Mabutu presidential guard, was found not credible.

Further, the applicant failed to establish by clear and convincing evidence that she was outside of the US within the one-year period immediately prior to the date of filing. She failed to provide convincing testimony or any factual documentation about her journey. She claims her husband helped her escape from Kinshasa by using a friend from Brazzaville who was a French citizen and smuggled her into the U.S. as his wife after flying to South Africa and the US on South African Airlines. NIS failed to reveal any records of the claimed arrival and she provided no other documents in support of her claimed arrival.

Applicant's testimony, country conditions, and applicable U.S. law do not indicate any changed circumstances which materially affect applicant's asylum eligibility, nor are there extraordinary circumstances that directly relate to the delay in filing.

Country conditions do not support that there are changed circumstances, which materially affect

applicant's asylum eligibility. Reliable country conditions between 2002-2003 are reported by:

http://news.bbc.co.uk/1/hi/english/world/africa/newsid_1134000/1134890.stm.

The Kabila Government controls roughly one half of the country - the other half is in the control of rebel forces. The Kabila Government's human rights record is poor. Citizens do not have the right to change their government peacefully. Security forces have reportedly been responsible for numerous extra judicial killings, disappearances, torture, beatings, rape and other abuses. In general, security forces committed these abuses with impunity although a special military tribunal tried and executed some security force members for human rights abuses. The special military tribunal tried civilians for political offences and executed civilians, often with total disregard of due process. Security forces have reportedly used excessive force and committed violations of international law in the war that started in August 1998.

Freedom in the World- 2004 Annual Report- Congo (DRC).

The signing of a peace agreement in July 2002 between the Democratic Republic of Congo (DRC) and its main external adversary, Rwanda, raised hopes that real progress could be made in ending the four-year war. The agreement requires President Joseph Kabila's government to disarm the Rwandan Hutu militia, the Interahamwe, which was responsible for the massacre of about 800,000 Tutsis and moderate Hutus in Rwanda in 1994. The agreement also obliges Rwanda, which entered the DRC ostensibly to pursue Interahamwe, to withdraw its troops. The Rwandan government said nearly all of its 20,000 forces had withdrawn by November. Uganda, Zimbabwe, Angola, and Namibia were near completion of withdrawal of their troops. However, the United Nations said in a report in October 2002 that the initial motivations for the war have been replaced largely by economic interests. The armies of Uganda, Zimbabwe, and Rwanda have, the UN report said, established permanent paramilitary and criminal proxies in the DRC to control that country's trade in diamonds, gold, and other natural resources. Unless there is large-scale disarmament, the withdrawal of foreign troops could lead to more instability as rival militias and factions battle for control.

Because applicant's I-589 was untimely filed and there are no changed or extraordinary circumstances which would result in the application being excepted from the filing deadline, applicant is prohibited from filing for asylum and his application rejected under INA Sec. 208 (a) (2) (B) & (D) and 8 C.F.R. Sec. 208.4 (a).

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
ARLINGTON, VIRGINIA

In the Matter of:

~~REDACTED~~

~~AIR 4-16-335~~

IN REMOVAL PROCEEDINGS

see pg 23

[Signature]

GOVERNMENT'S SUBMISSION OF DOCUMENTS

The Government intends to introduce the following documents into evidence at the merits hearing for this case. Copies of the document are attached hereto.

1. State Department Country Report for Indonesia, dated February, 2001;
2. Asylum Office Referral Assessment, dated July 31, 2001.

Respectfully Submitted,

Michael M. Metzgar

Michael M. Metzgar
Assistant District Counsel
U.S. Immigration and
Naturalization Service
4420 N. Fairfax Drive
Room 500
Arlington, VA 22203

mailed 11-7-01

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REFERRAL ASSESSMENT

Alien Number: ~~79-476-365~~

Date: 07/31/01

Name: ~~Ngat Kiat Kiat~~

Asylum Officer: Laurie O'Bryon, ZAR164

Country: Indonesia

Reviewing Officer: Ellen Johnsen

Location: ZAR

The applicant indicated that she is a 49 year-old female, native and citizen of Indonesia who entered the United States at New York on February 5, 2001 and was admitted as a B2 visitor and applied for asylum on June 5, 2001. Applicant filed within the one-year filing deadline.

The applicant fears that she will be harmed by the Indonesia-Malay citizens of Indonesia on account of her Chinese ethnicity.

The applicant testified that during the May 1998 riots, her beauty salon was burned down. On February 5, 1999, applicant and a friend were traveling in a pedicab when they were ordered to get out. Two native Indonesians robbed them of all of their money and valuables and held a knife to applicant's throat.

Applicant presented testimony that was believable, consistent, and sufficiently detailed and therefore the applicant is found to be credible. The events the applicant described and the harm the applicant fears are not found to have been on account of one of the five protected grounds. The robbery described by the applicant seems to be generalized street crime, and while applicant may have been chosen as a victim because of her Chinese ethnicity, there is no indication that the police or government were unwilling to assist her. Applicant chose not to file a report with the police because she was afraid to do so. The RIC received information from ICANET (Indonesian Chinese and American Network) in an e-mail dated March 28, 2001 (ICANET can be contacted through their website, <http://www.icanet.org/>), in response to a question about "Other everyday crimes against CI? [Chinese Indonesians], A: In general crimes are increasing everyday against anybody. Extortions against the ethnic Chinese Indonesian are commonplace and generally unreported."

As to the May 1998 riots, media reports indicate that a government-appointed investigative team concluded on November 4, 2000, that the May riots were orchestrated by pro-government militants, including rogue elements within the armed forces, aimed at justifying the imposition of emergency rule and keeping Suharto in power. (Keith B. Richburg, *Broken Lives*, *Washington Post Foreign Service*, December 23, 1998). Those affected were primarily, but not entirely, Chinese.

As of October 1999, a free and fair election installed a new government in Indonesia, and country conditions reports state that official policies towards the Indonesian Chinese have

actually improved.

In January President Wahid issued Presidential Decree No. 6, which repealed the ban (passed in 1967) on the practice of Chinese religion (Confucianism), beliefs, and customs. Ethnic Chinese celebrated New Year's openly for the first time in over 30 years. ... The Government restricts the import of Chinese-language publications and music. There are seven locally-published Chinese language newspapers. In November a new independent television station, Metro TV, began broadcasting 2 hours of news in Mandarin per day. The program was the first Chinese-language television broadcast in the country since 1965. ... The Chinese language now may be taught, spoken, and printed, and private instruction in Chinese no longer is prohibited. Some universities, including the University of Indonesia, offer Chinese-language instruction. A number of private institutions openly offer courses as well. Chinese-language publications in the country no longer are banned. ... Authorities no longer are required to note a special code on the national identification card for citizens of Chinese extraction. However, some Sino-Indonesians have claimed that this practice continues. See U.S. Department of State, "Indonesia," *Country Reports on Human Rights Practices for 2000*, <http://www.state.gov/g/drl/rls/hrrpt/2000/ea>, accessed 8/1/01.

Given the recent change in government, it is not possible to say in which direction the official policy is heading, nor whether the new government will be able to control the crime rate. There is no indication at this date that the official policies will change.

There have been ongoing conflicts between Muslims and Christians in Indonesia, but these seem to be primarily in the Moluccan islands, and in general haven't worsened since the time of applicant's departure from Indonesia. Human Rights Watch. *World Report 2001* (New York: Human Rights Watch, December 2000), p. 203.

The applicant also claims to have a fear of future persecution. However, as explained above, the applicant has failed to show that the harm she fears is on account of one of the five protected grounds and that the government is unable or unwilling to protect him.

For the foregoing reasons, applicant is not eligible for asylum status in the United States. Assessment is to refer to Immigration Judge.

APPENDIX**ASSESSMENT TO REFER**

Applicant is a 33-year-old male native of India and citizen of India.

Applicant credibly testified he entered the United States without inspection on June 8, 1994, at San Ysidro, CA, and was admitted as a [sic] and showed by clear and convincing evidence that he timely filed.

Applicant fears that he will be harmed on account of his political opinion.

Applicant testified that he was a member of the All India Sikh Student Federation (Federation). As a member of the Federation, Applicant collected funds and pasted posters. He was arrested four times. He was arrested April 3, 1990; March 10, 1991; December 1991; and December 29, 1993. After each arrested [sic] Applicant was detained for various lengths of time and was beaten and tortured by the police.

Applicant presented testimony which was [****31**] not consistent or sufficiently detailed. Therefore, he was not found to be credible.

Applicant presented testimony which was not consistent. Applicant's declaration indicates that his second and third arrest were in June 1991 and January 1992; not as he testified on March 10, 1991 and December 1991. Applicant's testimony regarding his third arrest was also inconsistent, he testified that his third arrest was in December 1991, then January 1992, then December 1993 back to December 1991 and then January 15, 1992. Applicant determined that his third arrest was on January 15, 1992 after it was pointed out that he could not have been detained for one month was [sic] December 1991 to January 1992 and be released after the February 1992 elections as he had testified. Applicant also testified that he left India on June 2, 1994, however, he also testified that after his last arrest in December 1993 he was detained for one month and upon his release, he left India within a few days time. This information is material to Applicant's claim because he testified that he was [sic] left India due to these arrests.

Applicant presented testimony which was not detailed. Applicant [****32**] was repeatedly asked to describe his arrests and his political activities. However, he was unable to provide any information beyond a short declarative sentence that the event happened. This information is material to Applicant's claim because he testified that he left India due to these arrests which occurred after he engaged in political activity.

Applicant has not shown there is a reasonable possibility of suffering the persecution that he fears.

For the foregoing reasons, the applicant is not eligible for asylum status in the United States. Assessment is to refer to the Immigration Judge.

CONCUR BY: Edward Leavy

CONCUR

LEAVY, Circuit Judge, concurring:

I concur in the result. The adverse credibility determination is not supported by substantial evidence.

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ATTACHMENT 5

Declaration of Ms. Anguimate about being raped

I am Paulette Tatiana Anguimate.

1. In February 2010 I was in jail in Bangui when I saw 2 men open the jail to pick me up aggressively from the group of people that was detained. They used force to pick me up and I was afraid because I knew something bad would happen. I asked myself why they choose me and I felt very scared.
2. They put me in a dark place and order me to undress myself and I asked why but they push me down and undress me. I tried to resist to him but he was stronger than me. They looked very scary.
3. Before raping me they said: this is why you should stop your political activities, now we will punish you for that. The taller one took his pant off and he said I'm going to fuck you today. I trying to resist bc I didn't want stranger to come closer to me. Since I was resisting to open my legs one of the man order to open my legs or otherwise he would have put in my vagina a bottle of beer... so I gave up because I was afraid the bottle will have hurt me even more. Both the soldiers abused me. I can't say exactly how long it lasted because it was terrible moments, but when the first one just finished the other one arrived.
4. They forced me to be abused, and I had blood in my vagina and then even in my underwear. My body was already in pain from the beating, and everything was very hurtful. Since they force me to have sex the penetration was very brutal and harsh and then I had problem every time I had to pee for the harm I reported.
5. When they finished they said ok put your clothes again and let's go. I was able barely to walk.
6. When they were raping me I wanted to die, I felt so ashamed, I thought about being pregnant . I was also very worried about contracting disease Hiv, (Chlamydia and similar I feared less because they are possible to cure).

7. After the rape, I "pensé que si j'avais un fusil, j'allais me suicider."
8. I have nightmares sometimes. I screamed in the night more than three times a week. and my cousin heard me and assisted me in that moment when I felt so scared.
9. I have flashbacks (especially when I am alone: thoughts coming and I got very mad and upset and I cry) and I am constantly thinking about past, and I am asking why it happened to me.
10. Sometimes I cry because of the rape, feeling mad and upset.
11. Feb 2011 my feelings: I'm 31 right now. When I was 19 I had a boyfriend called Dieu and I had sexual experience with him but now I don't want anymore. I have some emotions about Dieu I still love him today but I feel like I can't have normal relationship with him in fact I can't be sure about my physical condition. I worry I have STD. Now I am feeling a little better because I am far away from my original country but if I am alone in the street alone I am feel insecure about myself especially unknown men are around, I am not happy as I was .
12. Today, I feel I have no dignity. I worry that if others find out I was raped, they will think bad things about me. Maybe they will think I am contaminée

I do not speak good English; a friend helped me write this.

I hereby declare under penalty of perjury that the foregoing is true and correct,

Executed on February 22nd 2011,

Signature



REPUBLIQUE CENTRAFRICAINE
CENTRAL AFRICAN REPUBLIC

1. NOM : ANGLIMATE
SURNAME

2. PRENOMS : PAULETTE-TATIANA
GIVEN NAMES

3. NATIONALITE : CENTRAFRICAINE
NATIONALITY

4. SEXE : F
SEX

5. DATE DE NAISSANCE :
DATE OF BIRTH
10/01/80

6. LIEU DE NAISSANCE :
PLACE OF BIRTH
BANGUI

7. PROFESSION :
OCCUPATION
TECHNICIENNE SUP.
EN LABORATOIRE

8. DATE DE DELIVRANCE :
DATE OF ISSUE
06/02/2009
BANGUI LE

9. DATE D'EXPIRATION :
DATE OF EXPIRY
03/02/2014



Signature du titulaire :
Holder's signature

AYS

10. DONICHEL :
ADDRESS

11. CLASSEMENT DE DONICHEL :
NEW ADDRESS

12. SIGNALLEMENT :
Description
Telle : 1m70
Height
Yeux : BRUNS
Eyes
Cheveux : C/N
Hair

SIGES PARTICULIERS
SERIAL PARTICULARS

13. AUTORITE :
AUTHORITY
LE M.S.I.

General de l'Armée
Jules Bernard DUANDE
06/02/2009

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ATTACHMENT 6



June 29, 2011

FOIA Officer
U.S. Citizenship and Immigration Services
National Records Center, (FOIA/PA Office)
PO Box 64-8010
Lee's Summit, MO 64064-8010
[816] 350-5570 Fax: [816] 350-5785

RE: FOIA Request for a person in Immigration Court

ANGUIMATE, PAULETTE TATIANA -- A# 201-096-189

Dear Sir or Madam:

Enclosed please find:

- Form G-639
- Notice of Hearing

I hereby request:

- I-589 and Exhibits
- a copy of the typed ASSESSMENT written by the Asylum Officer
[I believe this would be two or three pages long.]

Thank you for your attention.

Sincerely,

David L. Cleveland
Attorney at law
[202] 772-4345

Page 1 of 4

SS

ATTACHMENT 7



U.S. Citizenship
and Immigration
Services

September 14, 2011

NRC2011070644

David Cleveland
Catholic Charities
924 G Street N.W., Suite 225
Washington, DC 20001

Dear David Cleveland:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office July 08, 2011, regarding Paulette Tatiana Anguimate.

We have completed the review of all documents and have identified 258 pages that are responsive to your request. Enclosed, are 238 pages released in their entirety and three pages released in part. We are withholding eight pages in full. In our review of these pages, we have determined that they contain no reasonably segregable portion(s) of non-exempt information. Additionally, we have referred five pages to Department of State and four pages, in their entirety, to US Visit for their direct response to you. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E) of the FOIA.

The following exemptions are applicable:

Exemption (b)(5) provides protection for inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information that we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

Exemption (b)(7)(C) provides protection for personal information in law enforcement records, which could reasonably be expected to constitute an unwarranted invasion of personal privacy. We have withheld information relating to third-party individuals. The types of documents and/or information that we have withheld could consist of names, addresses, identification numbers, telephone numbers, fax numbers, or various other documents that are considered personal.

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Exemption (b)(7)(E) provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information that we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

As a result of discussion between agency personnel and a member of our staff, as a matter of administrative discretion, we are releasing computer codes found on system screen prints previously withheld under exemption b(2). There may be additional documents that contain discretionary releases of exempt information. If made, these releases are specifically identified in the responsive record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

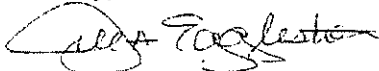
The enclosed record consists of the best reproducible copies available.

If you wish to appeal this determination, you may write to the USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139, within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

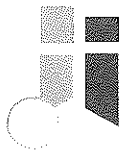
The National Records Center does not process petitions, applications or any other type of benefit under the Immigration and Nationality Act. If you have questions or wish to submit documentation relating to a matter pending with the bureau, you must address these issues with your nearest District Office.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the control number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, or sent by fax to (816) 350-5785. You may also submit FOIA/PA related requests to our e-mail address at uscis.foia@uscis.dhs.gov.

Sincerely,



Jill A. Eggleston
Director, FOIA Operations



Catholic Charities

Archdiocese of Washington

Opening doors to help and hope.

September 27, 2011

FOIA Appeals Office
150 Space Center Loop, Suite 500
Lee's Summit, MO 64064-2139

FREEDOM OF INFORMATION ACT APPEAL

NRC 2011 070 644

Ms. Paulette Tatiana ANGUIMATE

Dear Sir or Madam:

I hereby appeal your denial of my FOIA request.

You denied my request in your letter dated September 14, 2009.

Thank you for the 238 pages which you did release to me; however, what I really want is a copy of the typed ASSESSMENT TO REFER, written by the Asylum Officer [Ms. Jennifer Bibby-Gerth, ZAR 326].

The "Assessment" is perhaps two or three pages long, and would be dated May 10, 2011, or some date close to that.

A copy of the "Assessment" is now in the hands of the Chief Counsel for DHS in Arlington, VA.

Exemption (b)(5)

Your letter suggests, but does not say expressly, that the Assessment is exempt under (b)(5) because it "may" consist of "pre-decisional information."

Do you claim the Assessment does indeed consist of "pre-decisional information"? Please state expressly: Yes it does, or No, it does not.

Your failure to elucidate is unfair. How can I appeal your decision, if I do not know what it is?

An Assessment of an Asylum Officer is not "predecisional information." It is a document which is often introduced into evidence in Immigration Court by the DHS. See *Dorvilien v. Att'y Gen.* 2009 U.S. App. LEXIS 6448 [3rd Cir. 2009] and also *Aboflan v.*

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Immigration Legal Services

Holder, 2009 U.S. App. LEXIS 16700 [4th Cir. 2009].

If the DHS introduces a document into evidence at trial, it has waived whatever privilege or confidentiality that may have existed.

President Obama declared on January 21, 2009 that there is a clear presumption of disclosure, because a "democracy requires accountability, and accountability requires transparency."

In *Public Citizen v. OMB*, 569 F.3d 434, 439 (D.C. Cir. 2009) the court ruled that any exemption ruled upon by the agency must be "construed narrowly." Where a document does not make recommendations for policy change, it is not deliberative. Where a document does not contain internal deliberations, and where it does not "reflect the give-and-take of the consultative process," it is not deliberative. If the document is circulated outside of the agency, then of course it is not "for internal use only." [Id. at 440]. The documents in the *Public Citizen* case were not released outside of OMB; nonetheless, the court held the documents to NOT be exempt. Even if a document was predecisional at the time of making, it could lose that status if it is adopted as the agency position on an issue. [Id. at 443]. "A document that does nothing more than explain an existing policy cannot be considered deliberative."

If the documents in *Public Citizen* are not exempt from disclosure, then the Assessment of the Asylum Officer is even more clearly not exempt.

Exemption (b)(6)

Your letter suggests, but does not say expressly, that the Assessment is exempt under (b)(6) because it "may" consist of "birth certificates" or other documents which are "personal."

Do you claim the Assessment does indeed consist of "birth certificates" or other "personal" information? Please state expressly: Yes it does, or No, it does not.

Your failure to elucidate is unfair. How can I appeal your decision, if I do not know what it is?

An Assessment is not a birth certificate. There is no invasion of personal privacy involved here.

Exemption (b)(7)(C)

Your letter suggests, but does not say expressly, that the Assessment is exempt under (b)(7)(C) because it "could" consist of "names, addresses, identification numbers" or other documents which are "personal."

Do you claim the Assessment does indeed consist of "names, addresses, identification numbers" or other "personal" information? Please state expressly: Yes it does, or No, it does not.

Your failure to elucidate is unfair. How can I appeal your decision, if I do not know what it is?

Exemption (b)(7)(C) protects information in law enforcement records, which could invade someone's privacy. Whose privacy are you protecting? The Assessment is about my client. Giving it to my client does not invade her privacy.

Exemption (b)(7)(E)

Your letter suggests, but does not say expressly, that the Assessment is exempt under (b)(7)(E) because it "could" consist of "law enforcement systems checks, manuals..." or other documents which are "personal."

Do you claim the Assessment does indeed consist of "law enforcement systems checks, manuals..." or other "law enforcement" information? Please state expressly: Yes it does, or No, it does not.

Your failure to elucidate is unfair. How can I appeal your decision, if I do not know what it is?

Exemption (b)(7)(E) protects techniques of law enforcement, the disclosure of which might lead to circumvention of the law. There are no law enforcement techniques in an Assessment.

An Assessment is a summary of the testimony of the asylum applicant, and the conclusion of the Asylum Officer. Giving it to my client does not help her circumvent any laws.

Conclusion

It is often the case that an Assessment will be handed to the Immigration Judge and to all counsel, in open court in the Immigration Court.

If it can be given to all counsel in open court, it can be given to all counsel before the proceedings start in court.

If the DHS introduces a document into evidence at trial, it has waived whatever privilege or confidentiality that may have existed.

Please send me the Assessment. I want a copy of the typed ASSESSMENT TO REFER, written by the Asylum Officer [Ms. Jennifer Bibby-Gerth, ZAR 326].

The "Assessment" is perhaps two or three pages long, and would be dated May 10, 2011, or some date close to that.

I spent 1.5 hours writing and researching this appeal.

Sincerely,

LS
David L. Cleveland
924 G St. NW #225
Washington, DC 20001
(202) 772-4345



U.S. Citizenship
and Immigration
Services

December 21, 2011

APP2011000844

David Cleveland
Catholic Charities
924 G Street N.W., Suite 225
Washington, DC 20001

Dear Mr. Cleveland:

Re: NRC2011070644

You appealed the action of the National Records Center regarding your request for access to records pertaining to Paulette Tatiana Anguimate, dated July 08, 2011. The original determination of the National Records Center was to withhold 3 pages in part and 8 in full.

After careful consideration of your appeal, we have decided to affirm the initial action in this case. We have determined that the National Records Center properly withheld certain information that is protected from disclosure under the Freedom of Information Act and that this information is not appropriate for discretionary release.

If you are dissatisfied with our action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B). The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Sincerely,

Alan D. Hughes, Associate Counsel
Commercial & Administrative Law Division
Department of Homeland Security
Citizenship and Immigration Services